

Message Text

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PAGE 01 BOGOTA 05550 171758Z

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SUBJ: NARCOTICS ENFORCEMENT AND INTERDICTION IN COLOMBIA:

THE LEGAL BASIS

CARACAS FOR DEA

1. INTRODUCTION: RECENT INTERCHANGES MP CORRESPONDENCE AND CABLE TRAFFIC ON NARCOTICS MATTERS BETWEEN POST AND DEPT INDICATE THAT SOME CONFUSION MAY EXIST REGARDING THE STATUTORY AUTHORITY AND ROLE OF VARIOUS GOC ENFORCEMENT AGENCIES IN NARCOTICS MATTERS. THE FOL BRIEF AND SOMEWHAT SIMPLIFIED ANALYSIS OF CURRENT GOC DRUG ENFORCEMENT LAWS AND OPERATIONAL RELATIONSHIPS WAS PREPARED BY THE NARCOTICS COORDINATOR WITH ASSISTANCE FROM THE OFFICE OF THE AID/COLOMBIA LEGAL ADVISOR. IN THE ABSENCE OF CLEAR-CUT GOC GUIDELINES FOR COORDINATION OF DRUG INTERDICTION OPS, IT FORMS THE BASIS OF CURRENT DEA OPERATIONAL GUIDELINES IN COLOMBIA.

2. SUMMARY: ACCORDING TO OUR RESEARCH: RESPONSIBILITY FOR NARCOTICS ENFORCEMENT AND INTERDICTION IN COLOMBIA IS, BY STATUTE, SHARED BY THREE LAW ENFORCEMENT AGENCIES HAVING JUDICIAL POLICE POWERS: THE NATIONAL POLICE (F2) THE DEPT OF ADMIN SECURITY (DAS) AND CUSTOMSK A FOURTH AGENCY, THE ATTORNEY GEN (PROCURADOR
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PAGE 02 BOGOTA 05550 171758Z

GENERAL DE LA REPUBLICA) HAS STATUTORY AUTHORITY TO OVERSEE,

COORDINATE AND DPQECT ALL COLOMBIAN JUDICIAL POLICE ELEMENTS OF WHATEVER LAW ENFORCEMENT AGENCY'. HOWEVER, THE CODE OF PENAL PROCEDURE STATES THAT DAS HAS "PREFERENTIAL POWERS" FOR ALL JUDICIAL POLICE ACTIONS CONCERNING PUBLIC HEALTH. THIS IS INTERPRETED TO INCLUDE NARCOTICS MATTERS.

3. STATUTORY AUTHORITY. THE STATUTORY AUTHORITY FOR NARCOTICS ENFORCEMENT AND INTERDICTION IS CONTAINED IN THREE BASIC DOCUMENTS: LAW DECREE NBR 1188 OF 1974; THE CGZE OF CRIMINAL PROCEDURE (ART 283); AND LAW DECREE NBR 955 OF 70.

4. LAW DECREE NBR 1188 OF 74. - WHICH IS THE BASIC NARCOTICS STATUTE FOR COLOMBIA - ASSIGNS JURISDICTION FOR NARCOTICS AND DANGEROUS DRUGS TO THE REGULAR (READ CRIMINAL) JUDICIAL SYSTEM. AS A MATTER OF PRACTICE CIRCUIT JUDGES ARE ASSIGNED TO NARCOTICS CASES. THERE ARE NO SPECIAL NARCOTICS COURTS. JUDICIAL POLICE ARE BY STATUTE AUXILIARIES OF THE REGULAR JUDICIAL SYSTEM. THEREFORE, JUDICIAL POLICE ARE CONSIDERED TO HAVE NARCOTICS ENFORCEMENT AUTHORITY.

5. THE CODE OF CRIMINAL PROCEDURE INVESTS IN THE ATTORNEY GEN AUTHORITY TO OVERSEE, COORDINATE AND DIRECT ALL COLOMBIAN JUDICIAL POLICE ELEMENTS. THESE ELEMENTS ARE CURRENTLY THE F2 OF THE FLTIONAL POLICE, DAS AND CUSTOMS. THE ATTORGEN MAY ASSIGN INVESTIGATIVE TASKS TO EACH OF THESE ELEMENTS OR ANY OTHER ELEMENTS OPERATING AS JUDICIAL POLICE. THEREFORE THE ATTORGEN'S OFFICE MAY BE CONSIDERED A FOURTH GOC NARCOTICS ENFORCEMENT ENTITY. THE CODE OF CRIMINAL PROCEDURE ALSO ASSIGNS TO DAS "PREFERENTIAL POWERS" FOR ALL JUDICIAL POLICE ACTION CONCERNING PUBLIC HEALTH. PUB HEALTH IS INTERPRETED TO INCLUDE NARCOTICS ENFORCEMENT AND INTERDICTION. (IN SPECIAL CASES, THE ATTONREY GEN MAY MODIFY THE PATTERN OF PREFERENTIAL POWERS STATED IN THE CODE.) A CRITICAL ELEMENT IN INTERNATIONAL DRUG ENFORCEMENT COOPERATION IS THE INFORMAL EXPULSION FROM COLOMBIA OF FORN NATIONAL TRAFFICKERS. THIS AUTHORITY RESIDES SOLEY WITH DAS (LAW DECREE NBR 3169 OF 1968, ARTICLES 1 AND 20, AND DECREE NBR 1355 OF 70, ARTICLES 171-177).

6. THE CODE OF CRIMINAL PROCECEDURE ALSO ASSIGNS TO F2 OF THE NATIONAL POLICE "RESIDUAL" JUDICIAL POLICE AUTHORITY NOT LIMITED OFFICIAL USE

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PAGE 03 BOGOTA 05550 171758Z

EXPRESSLY OR EXCLUSIVELY INVESTED IN DAS. THEREFORE F2 CAN CLAIM NARCOTICS ENFORCEMTNT AUTHOITY. FURTHERMORE F2 MAY EXERCISE DE FACTO DRUG ENFORCEMENT CAPABILITY BECAUSE IT IS A JUDICIAL POLICE AGENCY AND BECAUSE NARCOTICS VIOLATIONS ARE CRMINAL VIOLATIONS AND, THUS, ARE SUITABLE FOR F2 -ACTION.

7. CUSTOMS IS INCLUDED IN THE CATEGORY OF JUDICIAL POLICE UNDER LAW DECREE NUMBER 955 OF 70, ARTICLE 35. UNDER THIS DECREE,

CUSTOMS AGENTS MAY OPERATE AS JUDICIAL POLICE WHEN THEIR INVESTIGATIONS CONCERN CONTRAVENTION OF CUSTOMS STATUTES, I.E. MATTERS OF CONTRABAND. THEREFORE AS AN AGENCY WITH JUDICIAL POLICE POWERS, CUSTOMS MAY CARRY OUT NARCOTICS INTERDICTION AND ENFORCEMENT ACTIVITIES WITH REFERENCE TO THE ILLEGAL IMPORTATION OR EXPORTATION OF DANGEROUS DRUGS. DECON UPON RECEIPT WHITE

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